
Legal Analysis of 2G Spectrum Scam

Brajesh Raj
New Law College, Pune

2G Spectrum Scam

It was believed to be the greatest fraud in independent India's history. Time Magazine ranked it as the second-largest abuse of executive authority, only after the Watergate crisis involving Richard Nixon. The 2G Spectrum Scam is considered to be a first blow to the trustworthiness & integrity of the UPA government.

What is a Spectrum?

It is a natural resource which is a range of electromagnetic waves which is used as a communication carrier, or in laymen's term, it is an invisible road to carry communication from one place to other. Its a natural resource because it exists without the action of human and is limited in quantity. Since it is a natural resource and available in limited quantity, the government controls and regulates it so that no individual can exploit the use of it and it comes under the jurisdiction of department of telecom.

What is the Spectrum Scam?

On 16th may in the year 2007, the UPA LED government led by then Prime Minister Hon. Manmohan Singh appointed Andimuthu Raja, Member of Parliament belonging to DMK Party as Minister of communications and information technology. In august 2007, the department of telecom started the process of allotment of 2G Spectrum.

On 4th of May, 2009, a Non-Governmental Organisation complained to the Central Vigilance Commission (CVC) about the unlawfulness in the 2G Spectrum distributions & the scam was found to be existed on 21st of October, 2009 and the investigation began.

3 years later, In the month of November in year 2010, the highest audit &Scrutiny body of India, the Comptroller & Auditor General of India (CAG) Published its report on the allotment of the licenses and allotment of 2G Spectrum done by the Department of telecom.

Mr. Vinod Rai, then Comptroller & Auditor General of India (CAG), in his report revealed that the 2G Spectrum licences has been given to the telecom companies at very throwaway / minimal prices and also without any auction or following standard procedure. The price of the spectrum at which it was sold by the ministry was far less than that of the true value which at which the spectrum would have been sold thereby causing approximate loss of Rs. 1 lakh 76 thousand crores to the treasury of India. Also, many operators who got the license were ineligible or they don't have proper documentations to receive the license.

The report further stated that had if the proper procedure to issue the license would gave been followed then the accurate profit would have been obtained giving a very good rise in the exchequer.

On 14th of March, 2011 A separate CBI court was created by the Delhi High Court to handle solely 2G case.

Meanwhile on 2nd of February, 2012 the Supreme Court dismissed the 122 licences issued by A Raja. The SC also ordered the fresh auctioning of licences within 4 months.

THE ALLEGATIONS

In the weeks leading up to the auction, the telecom ministry under A Raja modified the regulations and eligibility requirements numerous times. The ministry moved up the deadline for the auction.

According to a misleading First Come First Served (FCFS) Program, the ministry granted licences, and that too at a pricing which should be in the year 2001 rather than the pricing that should be in the year 2008.

According to reports, ministry employees closed counters to physically prevent a few telecom providers from joining the race to get the license.

A Raja, who was telecom minister at that time, defied recommendations from the TRAI, finance, law, and ministries. He was accused of manipulating auction procedures to favour a selected group of telecom operator companies.

Kanimozhi, the daughter of the then DMK Supremo and 5 times Chief Minister of Tamil Nadu Mr. K Karunanidhi, is alleged in the charge sheet by the CBI for maintaining contact with A Raja for the launching of Kalaighar TV channels. According to the CBI inquiry, Kanimozhi, a Rajya Sabha member in office, was a significant shareholder in the TV network.

The Legal Issues Involved

Charges on A Raja : - Criminal breach of trust by a public servant (section 409), Criminal conspiracy (Section 120-B), cheating (Section 420) and forgery (Sections 468 and 471); booked under the Prevention of Corruption Act for accepting illegal gratification.¹

What benefit did A Raja received in favouring telecom operators?

In the chargesheet filed by the CBI, they accused A Raja of persuading Shahid Balwa, Swan Telecom promoter to invest Rs 200 crore in Kalaighar TV Pvt Ltd, a business owned by several DMK first-generation members. A Raja was a member of DMK party and was minister in the UPA administration.

In the course of their investigations, the CBI and the Enforcement Directorate discovered that A Raja had accepted bribes totalling more than Rs 3000 crore for the issuance of 2G licences.

¹ News18, <https://www.news18.com/news/immersive/2g-scam-explained.html> (last visited July 8, 2022)

What the CBI Court said in its Verdict?

The special CBI court cleared the charges and blames on all 18 people who had been accused, along With A Raja and K Kanimozhi in the matter of the 2G spectrum allotment. The scandal was first revealed over twelve years ago, when the Comptroller and Auditor General (CAG) found that then-Telecom Minister A Raja was responsible for the loss of Rs 1,76,379 crore to the national treasury by issuing 2G spectrum licences at a great loss. However, the court determined that the charges were not sufficiently supported by the evidences. Despite this, the Supreme Court's ruling stands and the illegality of the licences granted during the 2G spectrum distribution is unaffected by this decision.

Conclusion

On 21st of December, 2017 the Special Court found all defendants not guilty, including former Telecom Minister Andimuthu Raja and DMK leader M Karunanidhi's daughter, Kanimozhi, who were accused of perpetrating one of the largest scams in Indian history, nearly six years after the Supreme Court revoked 122 2G licences. The prosecution, according to the court, "miserably failed", to establish any charge against any of the defendants.

However, merely non availability of enough evidence does not amount to proving someone not guilty of some act. There was some very big level of fraudulent action happened in the allotment of the licences that is why the Honourable Supreme court in the year 2012 cancelled the licenses issued to all the 122 telecom companies and suggested the correct procedure that is auctioning for issuing the license. The monetary size of the scam was so enormous that it made headlines in the international news papers for many weeks.

These acts by the people leading our country are not only pitiful but also shameful and these acts not only affect the common tax paying citizens of India but also portray a very corrupt face to the other countries internationally.

It is the duty of the ruling government to portray a positive image of our country internationally and not to indulge in these sorts of shameful acts. Also, it is a high time that the government take some lesson from these incidents and position only responsible, eligible and educated people to such big post in our country rather than distributing ministries like a sweet to make the member party of the coalition government happy.